IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE FOURTEENTH DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE SRI DEVINDER GUPTA,THE CHIEF JUSTICE

and
THE HON'BLE MR JUSTICE B.SESHASAYANA REDDY

WRIT PETITION NO : 7734 of 2004

Between:

1 C.Malla Reddy, S/o.C.Krishna Reddy,
R/o.H.No.443/A6, Jubilee Hills, Hyderabad.
2 B.S.A.Satyanarayana, S/o.Suryanarayana Murthy,
Plot No.181, Road, No.6, Hemanagar Colony, Nacharam,
Hyderabad.

.... PETITIONERS

AND

1 Election Commission of India, rep.by the Chief Election Commissioner,

New Delhi.
2 The Chief Electoral officer for A.P., Hyderabad.
3 Govt. of A.P.rep.by its Chief Secretary, Secretariat, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an appropriate writ, order or direction, particularly a writ in the nature of Mandamus, to protect the right to life guaranteed by article 21 of the Constitution which includes the right to democratic functioning in society through the precious right of universal, adult franchise through secret ballot- of the petitioners as also the citizens in general of the state, by directing the respondents herein to devise and work a foolproof mechanism with the main burden of this work to be carried out by them the official respondents only, by which every eligible voter would be included in the voters list of the polling booth nearest to his residence; award costs of the writ petition to the petitioners; and pass.

Counsel for the Petitioner: MR.I.MALLIKARJUNA SHARMA
Counsel for the Respondent No.3: MR.ARAJASHEKAR REDDY (SC FOR CG)
Counsel for the Respondent No.1 : Mr.C.P.Sarathy, Senior Counsel
Counsel for the Respondent No.2: G.P for GAD

The Court made the following :

ORAL ORDER: (per the Hon'ble the Chief Justice)

The writ petition is filed on 22.4.2004 for a direction in the nature of a writ of Mandamus to direct the respondents to devise and work out a fool proof mechanism so that every eligible voter would be included in the voters list of a particular polling booth nearer to his residence and by way of an interim relief prayed for immediate revision of electoral rolls of Assembly and Parliamentary constituency in the State scheduled to be held on 26.4.2004.

Petitioner No.1 is a senior advocate practicing in the High Court. Petitioner No.2 is also an advocate and a social activist. Petitioner No.1 stated that he has been the voter since decades and he and his wife had voted in 1999 parliamentary elections from Himayatnagar constituency where they were residing till then. Thereafter, they started residing permanently in their Jubilee hills house. The enumerators employed by the Election Commission came to their Jubilee Hills House and noted down the change of their address and when the process of issuance of photo identity cards by the Election Commission was launched, they had again gone to the center at Jubilee Hills International Club, got themselves photographed and they were assured that photo identity cards would be issued to them. He also received a post card informing him that identity cards would be sent soon but no identity cards were received by them despite specifically making a complaint and despite giving assurances by the concerned authorities. Due to busy schedule in their legal profession, they could not pursue the matter further and on 20.4.2004, the polling date fixed for elections, when they went to the Apollo Hospital Polling Booth where all their neighbours have been registered as voters, the Electoral Officer at the polling booth stated that their names were not there on the electoral rolls. The very next day morning i.e. on 21.4.2004, he read reports that number of voters had not voted as their names disappeared from the rolls and thus the petitioner states that action on the part of the respondents in not preparing the voters list in accordance with law and arbitrarily deleting their names from the voters list and not including

their names in the electoral rolls is illegal and arbitrary.

After notice, affidavit in reply has been filed by the Assistant Chief Electoral Officer, A.P. Secretariat stating that the rolls for every constituency will be revised under Sub-section (2) of Section 21 of the Representation of the Peoples Act, 1950 either intensively or summarily or partly intensively or partly summarily. In an intensive revision, a fresh roll is prepared on the basis of information collected by enumerators who visit every house hold and after inviting claims and objections on the data so collected. In a summary revision, the existing electoral rolls arepublished in draft for the purpose of General citizens to verify whether their names appear in the roll and they are allowed to file their claims for inclusion or objections for deletion of names, as the case may be, before the final publication is made. The procedure that is adopted for incusion/deletion of names under Rule 12 of the Registration of Electors Rules 1960 is that 30 days time or such shorter time as may be fixed, is allowed to lodge claims and objections in the prescribed forms from the date of publication of rolls in draft. A summary revision of electoral rolls with respect to 1.1.2004 as qualifying date was carried out in Andhra Pradesh last year and there was lot of advertisement through various media. The public were requested to see that they file their claims for inclusion of names in electoral rolls, if their names were not found in the rolls. The citizens were allowed to file their claims, if their names do not appear in the roll so that their names are included in the roll even till the last date of nomination at any election and not deprived of their franchise. It is also stated that if the name of any person still does not find place in the rolls, he/she can file claim application in accordance with law.

As regards the specific averments made by the petitioner, it is stated that on receipt of the claim, matter was enquired into and necessary corrections in so far as petitioner No.1 is concerned were made.

Learned counsel for the petitioners submits that in a case of this nature where the names of the petitioners were deleted without giving them any opportunity and without their names being included in the electoral rolls of the place to where they have shifted their residence, costs have to be imposed on the respondents for carrying on their duties negligently.

In writ jurisdiction, we are not inclined to go into the allegations of negligence which were made in the writ affidavit by the petitioners, in view of the reply affidavit filed by

the respondent denying the same. We cannot record any finding on the aspect of negligence on the part of the respondent officials on the disputed questions of fact and we relegate the petitioners of their remedy of filing a civil suit, if the petitioners have still any grievance. Since the name of petitioner No.1 has been duly entered in the electoral rolls, it will be for petitioner No.2 if his name has not been entered in the electoral rolls, to submit appropriate claim in which appropriate orders be passed by the respondents within a period of 30 days from the date of receipt of the claim. We do not find, on the face of it, dereliction on the part of the respondent since nothing is shown by the petitioner that they followed the mandatory requirements of law in submitting their applications.

The writ petition shall accordingly stand disposed of. No costs.

_____

DEVINDER GUPTA, CJ

Dated 14.02.2005

_____

B.SESHASAYANA REDDY,J

msv.

To

1 The Chief Election Commissioner, Election Commission of India,

New Delhi.
2 The Chief Electoral officer for A.P., Hyderabad.

3 The Chief Secretary, Secretariat, Govt. of A.P. Hyderabad.

4 2 CCs to the Government Pleader for GAD, High Court of A.P.

Hyderabad (OUT)

5 2 CD copies.